

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 444

Introduced by Assembly Member Caballero
(Coauthor: Assembly Member Blakeslee)
(Coauthor: Senator Wolk)

February 24, 2009

An act to amend Section 65965 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 444, as amended, Caballero. Land use: natural resources: transfer of long-term management funds.

Existing

(1) *Existing* law allows a state or local public agency to authorize a nonprofit organization to hold title to, and manage an interest in, real property that the state or local public agency requires a property owner to transfer to the agency to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, provided the nonprofit organization meets certain requirements. ~~Existing law also authorizes an agency that, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, to transfer the interest to a nonprofit organization that meets the specified requirements.~~

This bill would authorize funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization pursuant to the above provisions to also be conveyed to

the nonprofit organization. The bill would also require the nonprofit organization to hold, manage, invest, and disburse the funds in furtherance of managing and stewarding the land or easement for which the funds were set aside. The bill would authorize the state or local agency to impose certain requirements on the nonprofit organization and impose on the state or local agency specified due diligence requirements.

(2) Existing law also authorizes a state or local public agency that, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources to transfer the interest to a nonprofit organization that meets the specified requirements.

This bill would instead authorize a state or local public agency that, in the development of its own project, is required to protect an interest in real property to mitigate an adverse impact upon natural resources to transfer the interest to a nonprofit organization that meets the specified requirements or to provide funds to a nonprofit organization to acquire land or easements that satisfy the agency's mitigation obligations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65965 of the Government Code is
2 amended to read:
3 65965. (a) For the purposes of this section, the following
4 definitions apply:
5 (1) "Direct protection" means the protection and preservation
6 of natural lands or resources, including, but not limited to,
7 agricultural lands, wildlife habitat, wetlands, endangered species
8 habitat, open-space areas, or outdoor recreational areas.
9 (2) "Stewardship" encompasses the range of activities involved
10 in controlling, monitoring, and managing for conservation purposes
11 a property, or a conservation or open-space easement, as defined
12 by the terms of the easement, and its attendant resources.
13 (b) Notwithstanding any other law to the contrary, if a state or
14 local public agency requires a property owner to transfer to the
15 agency an interest in real property to mitigate any adverse impact
16 upon natural resources caused by permitting the development of

1 a project or facility, the state or local public agency may authorize
2 a nonprofit organization to hold title to and manage that interest
3 in real property, provided that the nonprofit organization is all of
4 the following:

5 (1) Exempt from taxation as an organization described in Section
6 501(c)(3) of the Internal Revenue Code, and qualified to do
7 business in the state.

8 (2) A “qualified organization” as defined in Section 170(h)(3)
9 of the Internal Revenue Code.

10 (3) An organization that has as its principal purpose and activity
11 the direct protection or stewardship of natural land or resources,
12 or cultural or historic resources, including, but not limited to,
13 agricultural lands, wildlife habitat, wetlands, endangered species
14 habitat, open-space areas, and outdoor recreational areas.

15 (c) If a state or local public agency, in the development of its
16 own project, is required to ~~transfer~~ *protect* an interest in real
17 property to mitigate an adverse impact upon natural resources, the
18 agency may; ~~transfer~~

19 (1) *Transfer* the interest to a nonprofit organization that meets
20 the requirements set forth in paragraphs (1) to (3), inclusive, of
21 subdivision (b).

22 (2) *Provide funds to a nonprofit organization to acquire land*
23 *or easements that satisfy the agency’s mitigation obligations.*

24 (d) (1) Funds set aside for the long-term management of any
25 lands or easements conveyed to a nonprofit organization pursuant
26 to subdivisions (b) and (c) may also be conveyed to the nonprofit
27 organization. The nonprofit organization shall hold, manage, invest,
28 and disburse the funds in furtherance of managing and stewarding
29 the land or easement for which the funds were set aside.

30 (2) The state or local public agency may require the nonprofit
31 organization to submit a report not more than every 12 months
32 and for a specified number of years that details the management
33 and condition of the property or easement and the accompanying
34 funds. The mitigation or funding agreement shall specify the
35 reporting due dates and elements of the report.

36 (3) If, after submission of the report described in paragraph (2),
37 the agency determines there is cause to consider that the terms of
38 the mitigation or funding agreement may have been violated, the
39 agency may review the accounting documents involving the funds

1 or require an audit of the funds to be performed and the audit report
2 submitted to the agency.

3 (e) The recorded instrument that places title with a nonprofit
4 organization pursuant to subdivision (b) shall include, at a
5 minimum, a provision that if the state or local public agency that
6 authorized the nonprofit organization to hold the title, or its
7 successor agency, determines that the interest in real property that
8 is held by the nonprofit organization is not being held, monitored,
9 or managed for conservation purposes in the manner specified in
10 that instrument or in the mitigation agreement between the state
11 or local public agency and the nonprofit organization, the interest
12 in real property shall revert to the state or that local public agency,
13 or to another public agency or nonprofit organization qualified
14 pursuant to subdivision (b), approved by the state or local public
15 agency.

16 (f) The funds of a nonprofit organization holding funds for the
17 long-term management of property shall revert to the state or local
18 public agency or to another public agency or nonprofit organization
19 approved by the state or local agency and qualified under
20 subdivision (b) if the nonprofit organization does any of the
21 following:

22 ~~(A)~~

23 (1) Ceases operations.

24 ~~(B)~~

25 (2) Is dissolved.

26 ~~(C)~~

27 (3) Becomes bankrupt or insolvent.

28 ~~(D)~~

29 (4) Fails to perform its duties for any reason.

30 (g) (1) A state or local public agency shall exercise due
31 diligence in reviewing the qualifications of a nonprofit organization
32 to effectively manage and steward natural land or resources, as
33 well as the accompanying funds.

34 (2) In furtherance of its exercise of due diligence:

35 (A) The state or local public agency may adopt guidelines to
36 assist the agency in the review process.

37 (B) With regard to accompanying funds, the state or local public
38 agency shall determine that the holder of the funds does all of the
39 following:

40 (i) Has the capacity to effectively manage the mitigation funds.

- 1 (ii) Has the capacity to achieve over the life of the agreement
- 2 reasonable rates of return on investment of those funds similar to
- 3 those of other prudent investors.
- 4 (iii) Utilizes generally accepted accounting practices, and will
- 5 be able to ensure that funds are accounted for, and tied to, a specific
- 6 property or project.
- 7 (iv) Has an adopted investment policy that is consistent with
- 8 the Uniform Management of Institutional Funds Act (Part 7
- 9 (commencing with Section 18501) of Division 9 of the Probate
- 10 Code) with regard to endowment funds and that is consistent with
- 11 Sections 18505 and 18506 of the Probate Code with regard to
- 12 nonendowment funds.